

## **The complaint**

Ms R complains that Bank of Scotland plc trading as Halifax (“Halifax”) didn’t do enough to protect her when she was the victim of a social media investment scam.

## **What happened**

The background to this complaint is well known to both parties, and so I’ll only refer to some key events here.

Ms R says she followed a page on social media which promoted an individual – whom she believed was an analyst who would be able to help her with investing. Ms R told us other followers were receiving messages from this analyst telling them about good investments at the time. Unbeknown to Ms R, she was in fact speaking with a fraudster.

Ms R said she was told she’d receive a return of £10,000 on a £10,000 investment and that she’d receive this return in a week. Ms R explained she thought this sounded good and so she agreed to invest in cryptocurrency.

On the advice of the analyst, Ms R set up an account in her name with a cryptocurrency exchange which I’ll refer to as S, and she proceeded to make an initial payment of £5,000 on 29 October 2021 to this account. Ms R says the analyst then said she needed to make another payment of £5,000 – totalling the £10,000 she agreed to invest. Ms R attempted a second payment of £5,000 on 30 October 2021.

Halifax spoke to Ms R about the second payment of £5,000 on 30 October 2021. Ms R didn’t proceed with the payment during this call, but later made it the same day via her mobile

After Ms R made the payment, the analyst stopped communicating with her. Ms R then contacted the bank to raise the scam. I understand this was on 1 November 2021.

Halifax considered the claim under the Contingent Reimbursement Model (CRM Code), to which it is a signatory. In its final response letter of 30 November 2021, it considered there was more Ms R could have done to protect herself. It thought it would have been reasonable for her to conduct validation checks on the person she was investing with. It said it provided a relevant warning when Ms R made the first payment of £5,000 and that, had she taken heed of this, it would have prevented her from sending the money.

Halifax also said in its submissions to this service that, as the payments were sent to an account in Ms R’s own name, which was under her control, the payments weren’t covered by the CRM Code. It added that, during the call on 30 October 2021 when the second payment was discussed, the bank’s agent was explicit about the risks of cryptocurrency and associated scams. It says Ms R was adamant she was making the payment to her own account and it doesn’t consider there was anything it could’ve done to stop her making the payment. It directed Ms R to contact S to see if it could assist her with recovering her funds.

Ms R remained unhappy and so she brought her complaint to this service. One of our Investigators looked into things and didn’t think the complaint should be upheld. In summary,

he didn't think the initial payment of £5,000 from Ms R's account would've appeared unusual or out of character to the bank. He was satisfied the second payment ought to have flagged with the bank, which is what happened here. There was a conversation between Ms R and Halifax about the attempted second payment. However, our Investigator was persuaded Ms R would have proceeded with the payment despite warnings or questioning from the bank. He added that within the call on 30 October 2021 Ms R confirmed on numerous occasions the account the payment was being sent to was in her name and that only she had control of the account. Overall, he didn't think the bank was liable for the money Ms R had lost.

Ms R didn't agree. She maintained that the initial payment was out of character and unusual and that had Halifax contacted her the scam could've been prevented. She's also told us about her circumstances at the time. She told us and the bank that she was suffering from post-natal depression and commented that she wasn't mentally stable at the time. She's also explained that around this time, a close relative had a health scare and she wanted to help them, that Ms R herself had also undergone surgery and, was going through a separation from her husband. She added that this combined with the pressure from the fraudster meant she wasn't thinking straight at the time.

Having considered Ms R's further comments, our Investigator's opinion remained unchanged.

As an agreement couldn't be reached, the matter has been passed to me to decide.

I issued my provisional findings on the merits of Ms R's complaint on 16 May 2023. In my provisional findings, I explained why I intended to uphold Ms R's complaint in part. An extract of that decision is set out below and forms part of this final decision:

*Under regulations, and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even if they were duped into doing so, for example as part of an investment scam.*

*The payments Ms R made from her Halifax account for the purpose of investing in cryptocurrency were made to an account she's told us she set up and was in her own name with S. Under these circumstances, the CRM Code, which requires signatories such as Halifax to reimburse customers who are victims of scams like this one in all but a limited number of circumstances, doesn't apply. This is because under the provisions of the CRM Code, only payments made to 'another person' are potentially eligible for reimbursement.*

*While I find the CRM Code doesn't apply here, that code is not the full extent of the relevant obligations that could apply in cases such as this. In accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for the losses incurred by its customers as a result.*

*Even though Ms R was transferring funds to an account (crypto account) in her name, Halifax ought to have been on the lookout for unusual and out of character transactions. While the transfers were made to her own e-wallet, scams involving transfers to cryptocurrency accounts were well known to banks by this time and I therefore think that where payments were also out of character, potential losses were foreseeable to the originating bank.*

*I've considered the operation of Ms R's account in the months leading up to the scam*

payments. Having done so, I'm persuaded the initial payment of £5,000 was unusual and suspicious such that I think Halifax ought to have intervened at this point. I say this because, I'm persuaded the incoming credit into the account and the initial payment of £5,000 on 29 October 2021 made to a cryptocurrency account ought to have put Halifax on notice that Ms R might be at risk of financial harm from fraud, given what the banks knew about these types of scams at the time. Whilst I note there were previous occasions where Ms R had credited her account and then made payments following this - for example, she paid an amount into her account and quickly afterwards made a payment of £2,880 out of her account on 15 September 2021 – here Ms R made a payment for almost double the amount of this payment, to a new payee and that payee was to a cryptocurrency account. As explained above, the fact the account was in Ms R's name, didn't stop the banks duty to be on the lookout for out of character transactions. So, it follows that I think the account would've appeared different to how it was previously being run and I think the initial payment ought to have caused Halifax concern.

As I think the initial payment of £5,000 ought to have put Halifax on notice that Ms R might be at risk of falling victim to a scam, I'm persuaded that Halifax ought to have intervened and got in touch with Ms R to ask her questions about the initial payment to satisfy itself that she was not at risk of financial harm.

I can see the second payment Ms R made of £5,000 on 30 October 2021, did flag on Halifax's fraud systems and there was a call with Ms R to discuss the payment. However, I consider this intervention should have happened on the initial payment on 29 October 2021 as I've explained above. Had it done so, I think Ms R's losses could've been prevented. I will now explain why.

In the call of 30 October 2021, in response to the agent's questions, Ms R confirmed she was making the payment for investment and in cryptocurrency. She shared that she hadn't been investing long and that it was something she'd seen online and through a recommendation. Ms R was asked if the account with S was in her own name and verified by herself to which she replied 'yes' and no-one else had login details. The banks agent also asked Ms R if 'whenever investing in cryptocurrency is everything controlled by yourself or do you have an account manager or a broker who advises you?'. Ms R explained that she has an analyst that advises her – whom she came across through social media. She confirmed the analyst didn't have access to her account with S and that the analyst keeps watch on trends and helps to go through it all – how to invest, when to buy and sell.

The banks agent then went on to ask further questions about the account with S – confirming everything was controlled by Ms R and initiated by her. The agent then explained that it was seeing more people investing in cryptocurrency and fraudsters/scammers taking advantage of this and that investment scams have been one of the bigger scams the bank was seeing. In brief, the agent then spoke about whether Ms R had been asked to download remote access software, on the basis they can assist in setting up accounts, accessing the accounts and then getting customers to transfer as much as possible and then send this onto a third party. The agent explained investing in cryptocurrency can be a high-risk investment and also read a statement from the Financial Conduct Authority (FCA) to her on this call. Ms R was again asked to confirm that everything was controlled by herself and that no-one had asked her to lie or mislead the bank about the reason for the payment. Ms R confirmed this was correct and that she was aware of the risks of investing money in cryptocurrency.

At this point, Ms R asked the agent if the funds were going to be released or whether she could think about it. The agent said the choice was Ms R's – that he could mark the payment as genuine or he could cancel the payment. Ms R asked for the payment to be cancelled and said she'd talk to her family and would then decide and send it again. The agent marked

*the payment as genuine but cancelled the payment.*

*Our Investigator was persuaded that the bank, in this call, had set out clearly how these scams work - including that fraudsters will encourage people to open crypto wallets in their own names and then carry out transfers from this account to a third party, which is what he said happened here. He didn't think he could fairly expect Halifax to have done anything more. However, I don't agree. I will now explain why.*

*In the call of 30 October 2021, Ms R shared that she was new to investing, that she'd made a payment to the account with S a few days prior, that she was being helped by an analyst whom she'd come across on social media. I recognise the bank asked questions to satisfy itself that Ms R was sending money to an account in her own name and that it was one she had control of, but I think the information Ms R shared ought to have indicated to Halifax that she may have been at risk from financial harm.*

*Cryptocurrency scams have been growing in prevalence for several years, with the FCA specifically providing commentary on them as early as June 2018, including publications on its website and a 'Dear CEO' letter. So I'm satisfied that Halifax ought to have been aware of, and on the lookout for, cryptocurrency scams at the time Ms R fell victim. That includes instances where a customer might make payments which first go to a cryptocurrency wallet in their own name.*

*Based on what I've set out above, I am persuaded Halifax was mindful of this within the call – specifically given that the agent read a statement by the FCA about investments. However, I'm not satisfied the bank went far enough when asking Ms R about the payment she was looking to make. I am not suggesting the bank should act as an 'amateur detective' but given the information Ms R provided in response to some probing questions, I think Halifax ought fairly and reasonably to have gone further than it did. The bank could have asked Ms R questions to find out what exactly the opportunity was, what the promised rate of return was and, explored further the role of the analyst and the fact Ms R shared that she'd come into contact with the analyst and investment by social media. All of which, given the banks knowledge, were hallmarks of this type of scam.*

*Overall, I'm currently persuaded that had Halifax asked further and follow up questions it ought to have fairly and reasonably have been on notice that Ms R may be at risk of financial harm and been concerned about the payment she was asking to make. It follows that I'm not persuaded the banks interactions went far enough in this particular case and further, I find the bank should have intervened and questioned Ms R about the initial payment of £5,000. Had this happened, I'm persuaded her losses could've been prevented.*

*Should Ms R bear some responsibility for her losses?*

*I have thought about whether Ms R should bear some responsibility for the money she's lost by way of contributory negligence. The consideration of contributory negligence is an objective test but in considering what's fair and reasonable I've factored in Ms R's vulnerability when considering the extent of any deduction for contributory negligence. Ms R has told us about her mental health at the time and has explained to both our service and the bank that she was suffering from post-natal depression (PND). Ms R commented that she wasn't mentally stable at the time, that her close relative had experienced a health scare and she wanted to help them following this, that she'd also undergone surgery and, was going through a separation from her husband.*

*I understand the bank has considered the information about Ms R's circumstances - this was at the time Ms R shared information with it and when our Investigator contacted the bank with information, but wasn't minded to find this affected Ms R's decision to send the money.*

*However, when taking into account everything Ms R has shared with us about her personal circumstances at the time, which I recognise was difficult for her to do, I consider there were factors which made it much less likely to have foreseen the risks when compared to the reasonable person.*

*This said, I think the suggested profit of 100%, within such a short period of time, seemed implausible that it ought to have concerned Ms R and led her to take more steps to ensure she was making a genuine investment. From what I've currently seen, I can't see that she was provided with, or asked for, a persuasive answer as to how this level of return could be possible, rather it seems she accepted what she was being told at face value.*

*I don't doubt the offer of such returns would have appeared enticing, but considering how high these returns were within such a short period of time, I think it's reasonable to have expected Ms R to have looked into things further before proceeding. And with her lack of investment experience, I think it's fair and reasonable to have expected Ms R to be more prudent in establishing the risks of the investment she was about to make.*

*On that basis, I think Ms R should share some responsibility for the loss and for a deduction to be made on the total loss of £10,000. Considering the individual circumstances of this case, I think a fair and reasonable deduction would be less than we might typically order, and I'm minded to say this should be 25%. Therefore, Halifax should refund 75% of payment one and payment two.*

*Finally, I've also gone on to consider whether Halifax took reasonable steps to recover Ms R's funds once it was aware of what had happened. While I think Halifax ought to have contacted the receiving firm to make a recovery attempt, which it doesn't appear to have done here, I don't think this has made a difference here. I say this because, Ms R sent the funds to a cryptocurrency account in her name and from there I understand she moved the funds on from the cryptocurrency platform, in cryptocurrency, to the fraudster. Given that Ms R had already moved the funds before reporting the scam to Halifax, I don't think Halifax has missed an opportunity to recover the money Ms R has sadly lost.*

### **Putting things right**

- *Refund 75% of payment one and payment two (I calculate this to be £7,500)*
- *Pay the savings account interest rate for Ms R's Instant Savers account on the above amount, from the date of loss to the date of settlement. I have arrived at the Instant Saver's account rate as I note from the statements that prior to Ms R making the initial payment of £5,000, she paid £5,000 into the account from her Instant Saver's account. Prior to making the second payment of £5,000 on 30 October 2021, she paid £4,000 into the account from her Instant Saver's account and then a further £1,000 from her card cash account. Given the amount to be refunded and in view of being pragmatic, I think the Instant Savers account rate is fair and reasonable.*

I invited both sides to provide any further arguments or information by 30 May 2023, after which point, I said I would issue my final decision on the matter.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

### **Responses to my provisional decision**

Halifax replied accepting my provisional findings.

Ms R replied with further comments. In summary, Ms R asked about a compensation payment due to the stress and trauma she's suffered since the scam has taken place. She explained that she feels the bank could've done more to help her and has said since the scam she is scared of making any financial decisions.

I'd like to assure Ms R that I've carefully considered her further comments and I don't underestimate the impact the whole experience will have had on her. I also understand why she wants to do all that she can to try and recover the money she has lost.

Further, I appreciate Ms R feels Halifax should've done more to protect her. As I've explained above, I thought Halifax ought to have intervened and questioned Ms R about the initial payment of £5,000. Had it done so I was persuaded the losses could've been prevented. However, I thought Ms R should share some responsibility for the loss and concluded a deduction of 25% was fair and reasonable in the circumstances of this particular case.

While I realise this will be disappointing to Ms R, I see no reason to depart from the findings and the resolution I proposed in my provisional decision as quoted above and for the further reasons I've set out here. I can't fairly hold Halifax responsible for the actions of the fraudsters – whom ultimately have caused Ms R distress and upset. With this in mind, I don't make any compensation recommendation in this particular case.

### **My final decision**

For the reasons set out in my provisional decision and above, I uphold this complaint in part.

I direct Bank of Scotland plc trading as Halifax to do the following:

- Refund 75% of payment one and payment two (I calculate this to be £7,500)
- Pay the savings account interest rate for Ms R's Instant Savers account on the above amount, from the date of loss to the date of settlement. I have arrived at the Instant Saver's account rate as I note from the statements that prior to Ms R making the initial payment of £5,000, she paid £5,000 into the account from her Instant Saver's account. Prior to making the second payment of £5,000 on 30 October 2021, she paid £4,000 into the account from her Instant Saver's account and then a further £1,000 from her card cash account. Given the amount to be refunded and in view of being pragmatic, I think the Instant Savers account rate is fair and reasonable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 5 July 2023.

Staci Rowland  
**Ombudsman**